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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,787

03/30/2005

Guy Deker

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1560

33308

7590

11/30/2009

LOWE HAUPTMAN HAM & BERNER, LLP
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EXAMINER

KISWANTO, NICHOLAS

ART UNIT

PAPER NUMBER

3664

MAIL DATE

DELIVERY MODE

11/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,787	Applicant(s) DEKER, GUY	
	Examiner NICHOLAS KISWANTO	Art Unit 3664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

As clarified in *Bilski*, the test for a method claim is whether the claimed method is (1) tied to a particular machine or apparatus, or (2) transforms a particular article to a different state or thing. This is called the “**machine-or-transformation test**”.

There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent-eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test.

Claims 1 to 3 are rejected under 35 U.S.C. 101 because it is a method that is not tied to a particular apparatus.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Doniger, 3892373.
3. Doniger discloses a capturing a predetermined vertical profile segment aircraft in a capture zone by applying a transition between a guidance submode which the aircraft

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is in and the guidance submode adapted to the following of the vertical profile segment which is captured determining the width of the capture zone as a function of the height h of the vertical profile to be captured and of the speed v which the aircraft has when plumb with this vertical profile segment (col 5, line 25-29; "***The rate portion is substantially constant and is proportional to the groundspeed of the aircraft***") when the aircraft is not on the profile or at this height when the aircraft is on the profile; and the width of the capture zone is determined as a function of the height h and of the square of the speed v (col 4, line 60-62; "***The integrator is actually in a closed loop formed by the signal path for signal he through the variable limiter***") on column 4 and on lines 25-28, on column 5.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doniger, 3892373, as applied above in further view of Lambregts et al., 5079711.

6. Doniger discloses the limitations as set forth above. It does not disclose the equation of the claim to find the envelope of the glide path of newly captured zone. Lambregts et al., teach using the total energy of an aircraft for determining the envelope for control of an aircrafts flight path on columns 5 and 6. It would have been obvious to

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one of ordinary skill in the art at the time the invention was made to use the total energy approach of Lambregts et al. in the invention of Doniger because such modification would provide simplicity of design, lower software requirements, and minimal adaptations for different aircraft as discloses on lines 40-45, on column 4, of Lambregts et al.

Response to Arguments

7. Applicant's arguments filed 9/14/2009 have been fully considered but they are not persuasive. Applicant's arguments that Doniger's invention is directed towards before a beam capture is not persuasive because Doniger's passage that Applicant points to is simply stating that height and velocity are not considered before beam capture. However, Doniger goes on in the rest of the paragraph to describe the beam capture process. Further, Applicant argues the interpretation of "plumb". However, there are two definitions of plumb: 1) to be directly above or below and 2) to be directly on. It cannot be ascertained from the Applicant's specification which definition is being used, nor how the aircraft is related geometrically to a height or vertical profile. Thus, Office must take the broadest reasonable interpretation that an aircraft will always be plumb to a vertical profile segment since it is traversing, namely "on", it.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICHOLAS KISWANTO whose telephone number is

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(571)270-3269. The examiner can normally be reached on Monday - Friday, 9AM - 6PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi Tran can be reached on (571) 272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Kiswanto/
Examiner, Art Unit 3664
/KHOI TRAN/
Supervisory Patent Examiner, Art Unit 3664